

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

Appeal from the Court of Appeals  
Hon. Pat M. Donofio, P.J., Hon. Jane E. Markey, Hon. Donald S. Owens

**SAL-MAR ROYAL VILLAGE, L.L.C.**

Plaintiff / Appellee,

vs

SC #147384

Court of Appeals # 308659

Macomb Cir. Ct. 2011-004061 AW

**MACOMB COUNTY TREASURER,**

Defendant/Appellant

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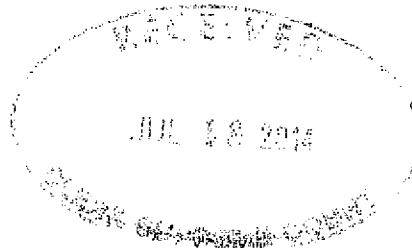
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**APPELLEE'S BRIEF ON APPEAL**

**Oral Argument Requested**

Proof of Service



## Table of Contents

Judgment being appealed from .....	iv
Index of Authorities .....	v
Counter-Statement of Questions Involved .....	ix
Plaintiff/Appellee's Statement of Material Facts and Proceedings Below .....	1
Argument .....	9
 <b>I. THE MICHIGAN COURT OF APPEALS CORRECTLY HELD THAT THE MICHIGAN TAX TRIBUNAL HAS THE AUTHORITY TO ORDER THE WAIVER OF INTEREST IN A TAX TRIBUNAL PROCEEDING.....</b>	
Standard of Review .....	9
Argument.....	10
<b>A. MCL 205.732 grants broad authority to the Michigan Tax Tribunal.....</b>	12
<b>1. The Tribunal was specifically created to resolve tax disputes.....</b>	13
<b>2. Case law supports the broad grant of powers to the tribunal</b>	16
<b>B. The Michigan Tax Tribunal, not the County Treasurer nor the Circuit Court, is the final arbiter of property tax disputes. ....</b>	19
<b>C. Tribunal decisions may not be collaterally attacked in another venue.....</b>	20
 <b>II. THE COURT OF APPEALS CORRECTLY HELD THAT JURISDICTION TO ENFORCE A TRIBUNAL DECISION MUST GO BEFORE A CIRCUIT COURT, AS THE TRIBUNAL HAS NO ENFORCEMENT POWER.....</b>	
Standard of Review .....	22
Argument .....	23
 <b>III. WHERE A COUNTY WORKS HAND IN HAND WITH A TOWNSHIP IN ASSESSING AND COLLECTING PROPERTY TAXES, AND WHERE THE COUNTY IS SERVED WITH A COPY OF THE TRIBUNAL PETITION AND CHOOSES NOT TO APPEAR, THE COURT OF APPEALS CORRECTLY HELD THAT THE COUNTY IS IN PRIVITY WITH THE TOWNSHIP AND THEREFORE BOUND BY A CONSENT JUDGMENT ENTERED BY THE TRIBUNAL.....</b>	
Standard of Review .....	29
Argument .....	31
<b>A. The township and county work hand in hand when collecting taxes, under the standard set forth by this Court in Baraga, the County Treasurer and Macomb Township were clearly in privity</b>	33

**B. The Township and County shared the same interest in the MTT litigation, to receive a fair assessment and jointly collect property tax, the fact that the County has a delinquent tax revolving fund does not defeat privity..... 37**

**C. The Township and County shared the same interest to assess property and collect property taxes; Defendant had the choice to intervene if it feared the township would not adequately represent this interest..... 39**

**D. Because the Township and County were in privity, the County is bound by the consent judgment, and Plaintiff's request for a writ of mandamus was proper..... 40**

**Conclusion ..... 41**

## **JUDGMENT BEING APPEALED FROM AND RELIEF SOUGHT**

Defendant Macomb County Treasurer appealed from the Court of Appeals decision in the Case of SAL-MAR ROYAL VILLAGE, LLC v MACOMB COUNTY TREASURER, COA # 308659, 301 Mich App 234; 836 NE2d 236 (2013), issued for publication on May 30, 2013. Defendant sought leave to appeal to this Court and on November 20, 2013 in lieu of granting leave to appeal this Court remanded this case to the Court of Appeals for consideration of whether Plaintiff's complaint for relief falls under the exclusive jurisdiction of the Michigan Tax Tribunal. On February 28, 2014 the Court of Appeals issued an opinion on remand finding that the Tribunal did not have exclusive jurisdiction over the mandamus action, *Sal-Mar Royal Village, LLC v Macomb County (On Remand)*, 304 Mich App 405; \_\_\_\_ NW2d \_\_\_\_ (2014).

## **Index of Authorities**

### Constitutional Provisions

Const 1963 art 9 section 28 .....	19, 21
Const 1963 art 3 section 3 .....	35

### Statutes

MCL 24.201 to 24.328 Administrative Procedures Act, .....	13
MCL 205.701 et seq. Tax Tribunal Act.....	passim
MCL 205.731 .....	12, 18, 19, 21
MCL 205.732 .....	2, 8, 12, 13, 15, 18, 25
MCL 205.735a .....	18, 28, 31, 40
MCL 205.737 .....	15, 17
MCL 205.741 .....	21
MCL 205.744.....	15, 43, 39
MCL 205.745 .....	16
MCL 205.753 .....	18, 20, 21
MCL 205.755 .....	11, 15, 28
MCL 211.1 et seq. General Property Tax Act. ....	passim
MCL 211.7cc .....	17
MCL 211.27a.....	35
MCL 211.34 .....	35, 39
MCL 211.42.....	35
MCL 211.43 .....	35
MCL 211.44 .....	35

MCL 211.45 .....	36
MCL 211.55 .....	36
MCL 211.57 .....	36
MCL 211.78a(3).....	10, 15, 36
MCL 211.87b .....	37

## Cases

<i>Adair v. State</i> , 470 Mich 105; 680 NW2d 386 (2004) .....	31, 38
<i>Alexandrea LLC v Brownstown Township</i> , MTT No. 448982 (June 18, 2014)..	27
<i>ANR Pipeline Co. v. Dept. of Treasury</i> , 266 Mich App 190; 699 NW2d 707 (2005). ....	32
<i>Ashland Twp. v. BAM Excavation</i> , unpublished opinion per curiam of the Court of Appeals, issued May 18, 2010 (Docket No. 289723) .....	20-21
<i>Baker v Gen Motors Corp.</i> 409 Mich 639, 665; 297 NW2d 387 (1980).....	9, 22
<i>Baraga v. State Tax Commission</i> , 466 Mich 264; 645 NW2d 13 (2002) 31-34,	39
<i>Beaudrie v. Henderson</i> , 465 Mich 124, 129; 631 NW2d 308 (2001).....	30
<i>Bechtel v Dep't of Treasury</i> , 128 Mich App 324; 340 NW2d 297 (1983). ....	30
<i>Bennett v. Detroit Police</i> , 274 Mich App 307; 732 NW2d 164 (2006).....	30
<i>Borden, Inc v Dept of Treasury</i> , 391 Mich 495; 218 NW2d 667 (1974) .....	30
<i>City of Detroit v Phillip</i> , 313 Mich 211, 216; 20 NW2d 868 (1945) .....	30
<i>Consumers Power Co v Corporation &amp; Securities Commission</i> , 326 Mich 643; 40 NW2d 756 (1950) .....	30
<i>Continental Motors v. Muskegon Twp.</i> , 375 Mich 13; 133 NW2d 163 (1965)...	21
<i>Detroit Edison Company v City of Detroit</i> , MTT Docket Nos. 319840, 319841, 319842, 319844, 319845, 319847, 319869, and 319911 (April 5, 2011)...	28

<i>Direct Workers Comp Agency v Macdonald's Indus Prods</i> , __ Mich App __; __ NW2d __ (March 27, 2014) .....	19
<i>Ecorse Screw Machine Products Co v Corporation &amp; Securities Commission</i> , 378 Mich 415; 145 NW2d 46 (1966). ....	30
<i>Elba Twp v Gratiot Co Drain Comm'r</i> . 493 Mich 265; __ NW2d __ (2013).....	22
<i>Ford Motor Co v State Tax Commission</i> , 400 Mich 499; 255 NW2d 608 (1977).....	30
<i>Federal Mogul v. Dept. of Treas.</i> 161 Mich App 346, 411 NW2d 169 (1987)....	16
<i>Hart v Dept. of Revenue</i> , 333 Mich 248, 52 NW2d 685(1952) .....	30
<i>Herman v Berrien Co.</i> , 481 Mich 352, 366; 750 NW2d 570 (2008).. 9, 10, 23, 31	
<i>Hillsdale County Senior Services v. Hillsdale County</i> , 494 Mich 46 ; __ NW2d __ (2013).....	13, 20, 23, 25, 26
<i>International Business Machines Corp v Department of Treasury</i> , __ Mich __; __ NW2d __ (July 14, 2014).....	10, 14, 22, 30
<i>Johnson v Kramer Bros Freight Lines, Inc</i> , 357 Mich 254; 98 NW2d 586 (1959).....	25
<i>Liberty Hill Housing Corp v Livonia</i> , 480 Mich 44; 746 NW2d 282 (2008)...	14
<i>Michigan Properties v. Township of Meridian</i> , 491 Mich 518; 817 NW2d 548 (2012) .....	12, 13, 14, 16, 20, 35
<i>Mikelonis v. Twp. of Alabaster</i> , 19 MTT 181 (2011) .....	18
<i>People v Koonce</i> , 466 Mich 515, 518; 648 NW2d 153 (2002). ....	9, 22, 30
<i>People v McGraw</i> ; 484 Mich 20, 126; 771 NW2d 655 (2009).....	9, 22, 30
<i>Prayer Temple of Love v. Wayne County Treasurer, (re Petition of the Wayne Co Treasurer)</i> , 286 Mich App 108; 777 NW2d 507 (2009).....	21
<i>Ready Power Co v Dearborn</i> , 336 Mich 519, 525; 58 NW2d 904 (1953) .....	30
<i>Sal-Mar Royal Village, LLC v Macomb County Treasurer</i> , 301 Mich App 234, 836 NW2d 236 (2013).....	passim

<i>Sal-Mar Royal Village, LLC v Macomb County Treasurer</i> (On Remand), 304 Mich App 405; ____ NW2d ____ (2014) .....	passim
<i>Sibley Lumber Co v Department of Revenue</i> , 311 Mich 654, 660 (1945) .....	30
<i>State Treasurer v. Eaton</i> , 92 Mich App 327; 284 NW2d 801 (1979) .....	14, 21
<i>Sun Valley Foods v Ward</i> , 460 Mich 230, 237; 596 NW2d 119 (1999).....	9, 11, 22, 31
<i>Tuggle v Mich Dep't of State Police</i> , 269 Mich App 657 (2005).....	41
<i>Wagner v Department of Treasury (In re Wagner Estate)</i> , 224 Mich App 400; 568 NW2d 693 (1997).....	18
<i>Wikman v. City of Novi</i> , 413 Mich 617; 322 NW2d 103 (1982).....	passim
<u>Court Rules</u>	
MCR 7.215(J)(1) .....	16
TTR 208 R 205.1208 .....	26
TTR 220 R.205.1220(4) .....	31
TTR 223 R.792.10223(7) .....	31



## **Counter-Statement of Questions Involved**

### **I. DID THE MICHIGAN COURT OF APPEALS CORRECTLY HOLD THAT THE MICHIGAN TAX TRIBUNAL HAS THE AUTHORITY TO ORDER THE WAIVER OF INTEREST IN A TAX TRIBUNAL PROCEEDING?**

Plaintiff-Appellee says "yes."  
Defendant-Appellant says "no".  
The Macomb County Circuit Court said "no".  
The Michigan Court of Appeals said "yes."

### **II. DID THE COURT OF APPEALS CORRECTLY HOLD THAT JURISDICTION TO ENFORCE A TRIBUNAL DECISION MUST GO BEFORE A CIRCUIT COURT, AS THE TRIBUNAL HAS NO ENFORCEMENT POWER?**

Plaintiff-Appellee says "yes."  
Defendant-Appellant says "no".  
The Macomb County Circuit Court said "no".  
The Michigan Court of Appeals said "yes."

### **III. WHERE A COUNTY WORKS HAND IN HAND WITH A TOWNSHIP IN ASSESSING AND COLLECTING PROPERTY TAXES, AND WHERE THE COUNTY IS SERVED WITH A COPY OF THE TRIBUNAL PETITION AND CHOOSES NOT TO APPEAR, DID THE COURT OF APPEALS CORRECTLY HOLD THAT THE COUNTY IS IN PRIVITY WITH THE TOWNSHIP AND THEREFORE BOUND BY A CONSENT JUDGMENT ENTERED BY THE TRIBUNAL?**

Plaintiff-Appellee says "yes."  
Defendant-Appellant says "no".  
The Macomb County Circuit Court did not rule on this question.  
The Michigan Court of Appeals said "yes."

## **Plaintiff/Appellee's Statement of Material Proceedings and Facts Below**

This matter brings before the Court a question as to the scope of power of the Michigan Tax Tribunal in issuing orders for refunds, as well as the extent to which a County Treasurer can frustrate that power in the county circuit court. This appeal arises out of the denial by the Macomb County Circuit Court of a writ of mandamus to enforce a consent judgment against the Macomb County Treasurer. The Plaintiff, Sal-Mar Royal Village LLC, ("Sal-Mar," or "Plaintiff") was a petitioner in a property tax appeal in the Michigan Tax Tribunal between itself and Macomb Township.<sup>1</sup> Said dispute encompassed four tax years, (2007 through 2010) and involved a vacant parcel of real estate located on Hall Road and Heydenreich Road.<sup>2</sup>

The Petition was timely received by the Michigan Tax Tribunal on May 31, 2007. A copy of that Petition was served, pursuant to MCR 205.735a(6), to the Respondent Macomb Township Assessor and Clerk, as well as to the Macomb County Clerk and Macomb County Equalization director.<sup>3</sup> The Respondent Township filed an Answer, and litigated the property tax appeal through the Township's attorney, Lawrence Dloski.<sup>4</sup> While Macomb County could have appeared separately or intervened as an interested party, no such

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<sup>1</sup> *Sal-Mar Royal Village LLC v Twp. of Macomb*, MTT Docket No. 337013. Appellant's Appendix on Appeal, 14a-18a.

<sup>2</sup> See MTT Petition and Proof of Service, Appellant's Appendix on Appeal, 69a-71a. The parcel number of the parcel is 20-08-33-400-019.

<sup>3</sup> Also served with the MTT petition was the Chippewa Valley School Superintendent. See Proof of Service, Appellee's Appendix 3b.

action was taken. Rather, as is typically the case in property tax appeals, the county allowed the township to represent its interest in the Michigan Tax Tribunal.

During the course of the property tax appeal, Sal-Mar was not current on its property taxes. The Defendant had notice of this state of affairs, because the Macomb County Treasurer filed a forfeiture certificate, which his office subsequently cancelled because the underlying taxes were in dispute in front of the Michigan Tax Tribunal.<sup>5</sup>

On November 24, 2010, Sal-Mar's counsel and Lawrence Dloski attended a Show-Cause/Prehearing Conference in Lansing before Tribunal Member Victoria L. Enyart. Sal-Mar filed and exchanged an appraisal prepared by Brian Kirksey, ASA, on that date, and a hearing date was set for February 17, 2011. The Township had no outside appraiser. It merely had assessment documents prepared by its former assessor. The potential tax savings which Plaintiff would have received, had it completely prevailed at hearing was approximately \$77,000.<sup>6</sup> A compromise was reached, resulting in a tax reduction of approximately \$47,000.<sup>7</sup> The parties entered into a Consent Judgment, which

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<sup>4</sup> Appellee's Appendix 9b.

<sup>5</sup> See court of appeals noting of the Treasurer's actual notice of Plaintiff's delinquency, due to its forfeiture action, and its cancellation due to pending litigation in the MTT. *Sal-Mar Royal Village LLC v Macomb County Treasurer*, 301 Mich App 234, 242; 836 NW2d 236, 241 (2013), Appellant's Appendix on Appeal, 121a.

<sup>6</sup> Appellant's Appendix on Appeal, 74a.

<sup>7</sup> Appellant's Appendix on Appeal, 74a.

was adopted by the Michigan Tax Tribunal. A key part of the agreement and judgment is paragraph 8 which reads:

8. The parties mutually waive penalty and interest due from either party provided all taxes or refunds due and owing as a result of this Joint Stipulation shall be paid by the Petitioner within twenty eight (28) days of any issuance of new tax bills or tax computations forwarded to Petitioner resulting from this Stipulation.<sup>8</sup>

This stipulation was executed by Mr. Dloski, or someone in Mr. Dloski's office on his behalf, on February 9, 2011. The stipulation was forwarded to the Michigan Tax Tribunal, and entered by the Tribunal on April 6, 2011. The third paragraph of that Consent Judgment sets forth as follows:

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Order within 28 days of the entry of this Order. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of the Tribunal's order. As provided in 1994 PA 254, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest rate of the 94-day discount treasury bill rate for the first Monday in each month plus 1%. As provided in 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after January 1, 1996 at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after

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<sup>8</sup> Appellant's Appendix on Appeal, 14a.

December 31, 1995 at the rate of 6.55% for calendar year 1996, (ii) after December 31, 1996 at the rate of 6.11 % for calendar year 1997, (iii) after December 31, 1997 at the rate of 6.04% for calendar year 1998, (iv) after December 31, 1998 at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999 at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000 at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001 at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003 at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004 at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005 at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006 at the rate of 5.42% for calendar year 2007, and (xiii) after December 31, 2007 at the rate of 5.81 % for calendar year 2008, (xiv) after December 31, 2008, at the rate of 3.31 % for calendar year 2009, (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010, and (xvi) after December 31, 2010, at the rate of 1.12% for calendar year 2011. (**See paragraph #8**).

See attached stipulation for any possible refund paragraph. [**Emphasis supplied in the original**].<sup>9</sup>

This long and unwieldy paragraph clearly references and incorporates paragraph 8 of the attached stipulation, quoted *supra*.

On April 28, 2011, the Defendant, through Mark Mudge prepared the revised tax bills, and a spreadsheet with the calculations of property taxes due and owing, which totaled \$269,314.40.<sup>10</sup> Per the spreadsheet, these calculations contained “summer interest” due, totaling \$27,145.65, plus interest on that product in the sum of \$33,859.77, plus administrative fees totaling \$2,004.21.<sup>11</sup> Removing the extra interest, interest on interest, and

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<sup>9</sup> Appellant’s Appendix on Appeal, 14a.

<sup>10</sup> Appellant’s Appendix on Appeal, 47a; 76a.

<sup>11</sup> Appellant’s Appendix on Appeal, 78a- 79a.

administrative fees, the revised amount of actual property taxes totals \$206,304.77.<sup>12</sup>

On May 23, 2011, Sal-Mar's Bank (Sterling Bank) paid on Sal-Mar's behalf the sum of \$206,304.77. Defendant has taken the position that Sal-Mar remains \$61,005.42 short, and continued to charge interest on this sum.<sup>13</sup> Further, as the Defendant refuses to consider the taxes paid in full, Sal-Mar is again in danger of forfeiture and foreclosure.

Sal-Mar originally filed its Complaint for Mandamus in the Ingham County Circuit Court, on June 23, 2011 alleging that the County Treasurer was a state officer.<sup>14</sup> Said court, per the Hon. Rosemary Aquilina, on Motion of Defendant, Ordered the venue to be changed to the Macomb County Circuit Court on August 31, 2011.

The Macomb Circuit Court assigned this matter to the Hon. David Viviano.<sup>15</sup> Per the Macomb County Circuit Court's pretrial, the case was to be decided on Motions for Summary Disposition. Both parties filed said motions, and traded briefs in support, and briefs in opposition.<sup>16</sup> Oral argument on these motions was held on January 30, 2012, and Judge Viviano ruled from

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<sup>12</sup> Appellant's Appendix on Appeal, 47a, 78a-79a.

<sup>13</sup> Appellant's Appendix on Appeal, 83a.

<sup>14</sup> Appellant's Appendix on Appeal, 10a-13a.

<sup>15</sup> Judge David Viviano is now addressed as Justice Viviano, having been elevated to the Michigan Supreme Court shortly after deciding this case.

<sup>16</sup> Appellant's Appendix on Appeal, 3a.

the bench, in favor of the Defendant on both Motions.<sup>17</sup> In so holding, Judge

Viviano stated:

THE COURT: All right. Well, I think in this case that the, I agree the County and counsel agrees the County is without statutory authority to waive the interest that's due. And so I don't need to get to the issue of whether or not the Tax Tribunal had jurisdiction to enter the order, because I think the order and the stipulation can be construed in a manner that's consistent with State law, and that is that it's, [sic] applies only to the parties to the action. And when it refers to the parties it means what it says, the parties to the tax appeal, and that those parties agree to mutually waive penalty and interest due from either party, again, party to the Tax Tribunal appeal. And it was not made explicit that it was intended to go further and bind Macomb County, nor do I think the Macomb Township has the authority in this capacity to bind Macomb County, certainly not on issues where it's not, it doesn't stand in the same shoes as the County. And, and [sic] I don't believe the Tax Tribunal order, to the extent that the argument is that they can order the County to waive interest, and that's an issue of first impression. I'm not persuaded that that issue should be decided in favor of the Plaintiff. But I don't think I have to reach that issue. I think I can base the Court's decision on the interpretation of the agreement between the parties and the consent judgment that was issued by the Tax Tribunal as a result.

All right. So the Plaintiff's motion for summary disposition will be denied. Defense motion for summary disposition will be granted for the reasons stated on the record.<sup>18</sup>

Judgment was entered after the hearing on the Motions on January 30, 2012.

Plaintiff timely filed its Claim of Appeal on February 20, 2012. After Briefs and Oral Argument, the court of appeals reversed the Circuit Court in a per curiam opinion, written for publication, and issued on May 30, 2013. The court of appeals reviewed the standards for granting mandamus; reviewed the standard for granting summary disposition, and reviewed the law regarding

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<sup>17</sup> Appellant's Appendix on Appeal, 117a.

privity. As to privity, the court concluded that the County Treasurer was working in a functional relationship with the Township to assess and collect property taxes. The court reasoned:

Although the definition of privity used by our Supreme Court in *Baraga County* applied to a situation involving the state and a local government, the general principle can be applied to this case. As provided above, this principle states that the state would not be bound by a judgment to which a subordinate political subdivision was a party unless that subdivision had an interest in the litigation as a trustee for the state. Thus, it would follow that the consent judgment between plaintiff and the township would not bind the county unless the township, as the subordinate political subdivision, had an interest in the litigation as a trustee for the county. Here, the township had authority to represent the county's interest in collecting taxes. Cf *ANR Pipeline Co*, 266 Mich App at 213-214 (indicating that privity did not exist where petitioner did not show that the party had the authority to represent the state's interest in collecting state taxes). If there are delinquent taxes, they are turned over to the county treasurer, who pays the township the delinquent taxes with funds from the county's fully funded revolving tax fund. Then, the county collects the delinquent taxes with interest and fees from the property owner. This is unlike the situation in *Baraga County* where the township carried out the property tax laws and the state would step in only if the township failed to carry out its duties. *Baraga County*, 466 Mich at 271-272. Rather, here, the township receives the tax rolls from the county and then sends bills to the taxpayers. The county will automatically pay any taxes that the township is unable to collect. Accordingly, the county and the township work hand in hand in collecting taxes. Thus, the township and the county shared the same interest in the MTT litigation, which was to receive a fair assessment of the value of the property in order to jointly collect the proper amount of taxes on the property.

Additionally, under the private-party definition of privity, the township and the county share a "substantial identity of interests" and a "working functional relationship." As noted, the township and the county work together to collect the property taxes owed. If the taxpayers become delinquent on their taxes, the county will

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<sup>18</sup> Appellant's Appendix on Appeal, 84a; 113a:10 – 114a:15.



pay the township from a revolving fund and then seek reimbursement from the taxpayer. It is clear the two entities are in a working functional relationship with one another to assess property and collect the property taxes.<sup>19</sup>

The court of appeals also addressed Defendant's argument that waiving interest was beyond its authority. In ruling in favor of Sal-Mar, the court relied upon §32(b) and (c) of the Tax Tribunal Act.<sup>20</sup> The court stated:

Defendant also argues that the MTT did not have the authority to waive interest on the delinquent taxes. However, there is no statutory authority that prevents the MTT from doing so. In fact, MCL 205.732(b) and (c), provides that the MTT's powers include, *but are not limited to*, "[o]rdering the payment or refund of taxes in a matter over which it may acquire jurisdiction" and "[g]ranteeing other relief or issuing writs, orders, or directives that it deems necessary or appropriate in the process of disposition of a matter over which it may acquire jurisdiction."<sup>21</sup>

The Court also determined that the language of the Consent Judgment must be enforced as written. Accordingly, the term "interest" means interest; not merely judgment interest, as argued by the Defendant.

The court of appeals reversed and held that a writ of mandamus should have been entered by the circuit court. The Defendant Treasurer filed the present Application for Leave to Appeal to this Court on July 7, 2013. On November 20, 2013 in lieu of granting leave to appeal this Court remanded this case to the Court of Appeals for consideration of whether Plaintiff's complaint for relief falls under the exclusive jurisdiction of the Michigan Tax Tribunal.

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<sup>19</sup> *Sal-mar-Royal Village LLC v. Macomb County Treasurer*, 301 Mich App 234, 240-241; 836 NW2d 236, 240 (2013).

<sup>20</sup> MCL 205.732(b) and (c)

<sup>21</sup> *Sal-mar-Royal Village LLC v. Macomb County Treasurer*, 301 Mich App 234,

On February 28, 2014 the Court of Appeals issued an opinion on remand finding that the Tribunal did not have exclusive jurisdiction over the mandamus action, *Sal-Mar Royal Village, LLC v Macomb County (On Remand)*, 304 Mich App 405; \_\_\_\_ NW2d \_\_\_\_ (2014). On April 23, 2014 this Court granted the application for leave appeal.

### **Argument**

#### **I. THE MICHIGAN COURT OF APPEALS CORRECTLY HELD THAT THE MICHIGAN TAX TRIBUNAL HAS THE AUTHORITY TO ORDER THE WAIVER OF INTEREST IN A TAX TRIBUNAL PROCEEDING.**

##### **Standard of Review**

When interpreting statutes, this Court must “ascertain and give effect to the intent of the Legislature.” *People v Koonce*.<sup>22</sup> In interpreting a statute, this Court avoids a construction that would render any part of the statute surplusage or nugatory. *People v McGraw*;<sup>23</sup> *Baker v Gen Motors Corp.*<sup>24</sup> When considering the correct interpretation, the statute must be read as a whole. *Sun Valley Foods Co v Ward*.<sup>25</sup> Individual words and phrases, while important, should be read in the context of the entire legislative scheme. *Herman v Berrien*

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242-243; 836 NW2d 236, 241 (2013).

<sup>22</sup> 466 Mich 515, 518; 648 NW2d 153 (2002).

<sup>23</sup> 484 Mich 20, 126; 771 NW2d 655 (2009).

<sup>24</sup> 409 Mich 639, 665; 297 NW2d 387 (1980).

<sup>25</sup> 460 Mich 230, 237; 596 NW2d 119 (1999).

Co.<sup>26</sup> Tax statutes whenever possible are to be interpreted in pari materia.

*International Business Machines Corp v Department of Treasury.*<sup>27</sup>

### Argument

The Defendant's argument that the Michigan Tax Tribunal exceeded its authority in waiving interest, and thus could be overruled by the County Treasurer can be reduced to the following syllogism:

- The General Property Tax Act ("GPTA") imposes a duty on the County Treasurer to add interest to delinquent Taxes;<sup>28</sup>
- There is no specific waiver provision in the General Property Tax Act for interest imposed on delinquent taxes,
- Ergo, the Judgment of the Michigan Tax Tribunal must be ignored as to waiver of interest.

The Defendant is arguing that 211.78a(3), which governs Treasurers, trumps the Tax Tribunal Act, ("TTA"), and the powers given to the Michigan Tax Tribunal are a therefore a nullity.

The GPTA sets forth the regimen as to how ad valorem taxes are assessed and collected. This Act however, is mostly silent as to the role of property tax appeals to the Michigan Tax Tribunal ("MTT"). In fact, there is no explicit provision in the GPTA providing for the Treasurer to lower assessed values or

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<sup>26</sup> 481 Mich 352, 366; 750 NW2d 570 (2008).

<sup>27</sup> \_\_\_ Mich \_\_\_; \_\_\_ NW2d \_\_\_ (July 14, 2014).

<sup>28</sup> MCL 211.78a(3).

taxable values of a parcel after adjudication by the Michigan Tax Tribunal. That power, as well as the power to determine the terms of a refund, is given to the Michigan Tax Tribunal under the Tax Tribunal Act.<sup>29</sup> The Defendant's sole reliance upon the GPTA is therefore misplaced. Because the GPTA is mostly silent as to property tax appeals to the Tribunal, the County, under this logic, is free to ignore *any and every decision of the Michigan Tax Tribunal*. Further, such logic would empower the Treasurer, rather than the Michigan Tax Tribunal, as the final arbiter of how property tax appeals are to be resolved. Clearly, Michigan's statutory scheme does not allow the Treasurer to usurp the Tribunal's quasi-judicial powers.

Proper statutory interpretation requires a look at the broad scheme of our property tax statutes and harmonize them. *Sun Valley Foods Co v Ward*.<sup>30</sup> The General Property Tax Act sets forth the scheme as to how real and personal property in Michigan may be taxed. It sets forth specific procedures for local officials to follow. It sets forth in specific terms the roles of assessors, Boards of Review, and Treasurers in assessing and collecting taxes. The Tax Tribunal Act on the other hand, sets up a quasi-judicial agency charged with enforcing our tax laws, and importantly, resolving disputes as to property

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<sup>29</sup> See MCL 205.755(1) "Within 20 days after entry of the order, the officers charged with keeping the rolls on which the affected assessment and tax are spread shall correct the rolls and the officer charged with collecting or refunding to the affected tax shall thereafter collect or refund it, in accordance with the order."

<sup>30</sup> 460 Mich 230, 237; 596 NW2d 119 (1999).

taxes. Unlike the GPTA which assigns very specific terms, the TTA gives the Tribunal broad powers to settle tax disputes and issue refunds.

**A. MCL 205.732 grants broad authority to the Michigan Tax Tribunal.**

The Defendant seems entirely confused regarding the purpose of the tax tribunal, as it both ignores and hails its exclusive jurisdiction.<sup>31</sup> The Legislature granted the Michigan Tax Tribunal broad authority over tax assessment questions under MCL 205.731. The legislature, in MCL 205.732, set forth the powers of the Tribunal. This Court recently decided a combined case that ruled on these powers of the Michigan Tax Tribunal concerning provisions found in the General Property Tax Act. In *Michigan Properties v. Meridian Twp.*<sup>32</sup> the Court noted the Tribunal's powers under the TTA:

*The tribunal's powers include, but are not limited to, all of the following:*

- (a) Affirming, reversing, modifying, or remanding a final decision, finding, ruling, determination, or order of an agency.*
- (b) Ordering the payment or refund of taxes in a matter over which it may acquire jurisdiction.*
- (c) Granting other relief or issuing writs, orders, or directives that it deems necessary or appropriate in the process of disposition of a matter over which it may acquire jurisdiction.*
- (d) Promulgating rules for the implementation of this act, including rules for practice and procedure before the tribunal . . . under the*

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<sup>31</sup> Defendant simultaneously argues that the Tribunal's powers are limited and therefore they do not have the power to waive interest, while also arguing that the broad jurisdiction and powers of the Tribunal provides them with the power to enforce their own judgments.

<sup>32</sup> 491 Mich 518; 8172d 548 (2012)

administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. [*Emphasis in original.*] <sup>33</sup>

Clearly, the Michigan Tax Tribunal has jurisdiction over property taxes. Under section 32 (c), it has the power to order payment of refunds, as well as issue miscellaneous orders, and other powers not enumerated, including the waiving of interest. The reason for this broad grant of powers, even those not named, can be elicited from the legislative history in creating the Tax Tribunal.

**1. The Tribunal was specifically created to resolve tax disputes.**

The Tax Tribunal Act was created in 1973 by the Legislature and was designed to promote prompt and fair resolution of tax disputes. As this Court indicated in *Wikman v. Novi*,<sup>34</sup> a venerable case that was relied upon recently in *Michigan Properties v. Meridian Twp.*<sup>35</sup> and *Hillsdale County Senior Services v. Hillsdale County*<sup>36</sup>, prior to the Tax Tribunal Act a taxpayer could either appeal a decision to the State Tax Commission, or pay the tax under protest and file an action in circuit court for a refund.<sup>37</sup> These varying avenues to pursue relief ultimately led to forum shopping and inconsistent decisions.<sup>38</sup> The Tax

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<sup>33</sup> *Mich Properties*, p. 543.

<sup>34</sup> 413 Mich 617; 322 NW2d 103 (1982).

<sup>35</sup> 491 Mich 518; 8172d 548 (2012)

<sup>36</sup> 494 Mich 46 ; \_\_ NW2d \_\_ (2013).

<sup>37</sup> *Wikman* at 627.

<sup>38</sup> *Wikman* at 628.

Tribunal Act was enacted and a Tax Tribunal formed to address these

concerns.<sup>39</sup> As the Court of Appeals noted in *State Treasurer v Eaton*,<sup>40</sup>

One apparent legislative purpose of vesting the tax tribunal with such broad authority over property tax assessment questions was to assure that tax contests would be resolved in the first instance by an expert body. Cf., Davis, *Administrative Law Text*, § 19.01, pp 373-374 (rationale behind doctrine of primary jurisdiction).<sup>41</sup>

The legislature gave the Tribunal broad powers over tax assessment issues to ensure that these tax contests were resolved efficiently, consistently, expertly, and finally.<sup>42</sup> Defendant seeks (in this instance) to read the General Property Tax Act with no regard for the Tax Tribunal Act nor its purpose. Proper statutory interpretation requires a look at the broad scheme of our property tax statutes to harmonize them;<sup>43</sup> the Tribunal was created to interpret the provisions of the GPTA, to lessen the burden of circuit courts, prevent inconsistencies, and to utilize experts to make determinations. To read one act without the other is to create just such a “new rule of statutory construction” as Defendant accuses the Court of Appeals.

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<sup>39</sup> *Wikman* at 29 and also *Michigan Properties* at 541-542

<sup>40</sup> 92 Mich App 327; 284 NW2d 801

<sup>41</sup> *State Treasurer* at 333.

<sup>42</sup> Appellate review of tax tribunal decisions are limited, unless fraud is alleged, the Court reviews the decision for a misapplication of the law or adoption of a wrong legal principle. See *Liberty Hill Housing Corp v Livonia*, 480 Mich 44; 746 NW2d 282 (2008).

<sup>43</sup> *International Business Machines Corp v Department of Treasury*, \_\_\_\_ Mich \_\_\_\_, \_\_\_\_ NW2d \_\_\_\_ (July 14, 2014).

Here the Tribunal clearly incorporated the waiver of interest and penalties and administrative fees in its final decision.<sup>44</sup> The very language of the consent judgment quoted above is based upon MCL 205.755 and MCL 205.737. As the Tribunal ordered it, the Defendant has a non-discretionary duty to follow orders.<sup>45</sup> However, the Defendant argues that the Tribunal judgment, and the Court of Appeals in ruling that the circuit court can enforce that judgment, somehow does not follow the General Property Tax Act<sup>46</sup> as the Treasurer has no power to waive penalty and interest under MCL 211.78a(3). However, no such provision is necessary, as the Tax Tribunal Act governs here.

As the court of appeals noted below, waiver of interest was within the Tribunal's exclusive and original jurisdiction under 205.731 of the TTA, and within its broad powers under MCL 205.732.

In fact, MCL 205.732(b) and (c), provides that the MTT's powers include, *but are not limited to*, "[o]rdering the payment or refund of taxes in a matter over which it may acquire jurisdiction" and "[g]ranting other relief or issuing writs, orders, or directives that it deems necessary or appropriate in the process of disposition of a matter over which it may acquire jurisdiction."<sup>47</sup>

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<sup>44</sup> See third paragraph of consent judgment and paragraph 8, quoted above and attached in Defendant's Appendix on Appeal 14a-18a.

<sup>45</sup> Defendant also notes that the interest contemplated within MCL 205.755 and 205.737 must be read in conjunction with MCL 205.743(1), which requires that taxes be paid prior to the entry of a judgment. However, as the second sentence of (1) indicates, the Tribunal in their discretion can waive this requirement, as it clearly did upon entering the current consent judgment. Furthermore, these provisions should be read not just with reference to the requirement that taxes be paid prior to a decision, but broadly within the statute, the entirety of Chapter 3 of the tax tribunal act focuses on the broad jurisdiction and powers of the Tribunal.

<sup>46</sup> MCL 211.1 et seq.

<sup>47</sup> *Sal-mar-Royal Village LLC v. Macomb County Treasurer*, 301 Mich App 234,



Clearly the ability to waive interest was within the Tribunal's jurisdiction and within its broad powers.

## **2. Case law supports the broad grant of powers to the Tribunal**

The Defendant relies upon the case of *Federal Mogul v. Dept. of Treasury*<sup>48</sup> for the proposition that because the Tribunal may not award interest without statutory authority, it cannot waive interest without similar authority. *Federal Mogul* only speaks to the first part of Defendant's assertion. The argument that the converse must apply is purely an invention of the Defendant and does not logically follow. The power to award interest, which is a legislative function, is different in kind than the power to waive interest which is a judicial function. Obviously, there must be a right before there can be a waiver of that right. *Federal Mogul* addressed the former, not the latter. Unlike the present case, there was no agreement between the parties regarding interest in *Federal Mogul*, where the MTT rendered its own judgment. Had the parties settled in that case, waiver of interest would not have been an issue.<sup>49</sup> Had that issue been before the court, the result urged by Appellee in the present case does not logically follow.

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242-243; 836 NW2d 236, 241 (2013).

<sup>48</sup> 161 Mich App 346, 411 NW2d 169 (1987).

<sup>49</sup>Consent judgments are not appealable, per MCL 205.745. It is also noteworthy that *Federal Mogul* was decided in 1987. Per MCR 7.215(J)(1), the court of appeals is only bound by published decisions issued on or after November 1, 1990, and thus was not bound by *Federal Mogul*, even if it had found a conflict. Obviously, the Court is not bound by any decision of the court of appeals; and is not likely to be persuaded by it, in lieu of *Michigan Properties*, supra.

It is of further note that Macomb County, Oakland County, and other taxing authorities, routinely require taxpayers to waive interest as a condition of entering into a consent judgment. The fact that there is no provision under the GPTA for such a waiver has never dissuaded municipalities, including those within Macomb County, from requesting waivers, nor dissuaded the MTT from entering judgments containing such waivers.<sup>50</sup> Should this court rule that there is no such authority for parties to waive interest, the legality of many, (if not most) MTT consent judgments will be called into question, and the abilities of litigants, including municipalities to receive the benefit of waiver will be severely limited. Holding that the parties lack the power to waive interest in a court without powers of equity as urged by the Defendant would also call into question many judgments approved by district courts and other state agencies, such as the Worker's Compensation Board which likewise, have no equitable powers. Such a decision would be a radical departure from current practice, and would deprive litigants as well as courts of another valuable tool in which to settle disputes.

Appellee also erroneously relies upon a Tribunal decision for the proposition that there must be specific authority for waiver of interest to be allowed. *Mikelonis v. Twp. of Alabaster*.<sup>51</sup> That case dealt with the rescission of a homestead exemption, where special rules apply under MCL 211.7cc as to

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<sup>50</sup> Interestingly, MCL 211.737(4) utilizes the word "shall" in requiring interest, but interest is routinely waived by parties in consent judgments.

<sup>51</sup> 19 MTT 181 (2011), A copy may be found in Appellant's Appendix at 50a.

jurisdiction, as well as interest. Interestingly, the Tribunal held that the MTT was NOT precluded from waiving interest. The Defendant's argument fails to cite the second ground relied upon by the MTT for approving an interest waiver, § 53 of the Tax Tribunal Act, (MCL 205.753) which provides that the Tax Tribunal is the "final agency for administration of property tax laws."<sup>52</sup>

Defendant also relies on *Wagner v Department of Treasury (In re Wagner Estate)*,<sup>53</sup> for the proposition that the Probate Court could waive interest and penalties on estate taxes because Department of Treasury was given statutory authority. Such statutory authority has been granted to the Tribunal as outlined previously. Furthermore, the court of appeals in *Wagner* also relied in part on the broad jurisdiction and authority granted to the probate court to hear and determine questions regarding the inheritance tax act,<sup>54</sup> this is akin to the broad power granted to the Tribunal under the Tax Tribunal Act as the final administration of property tax laws under MCL 205.735 and the broad jurisdiction delineated in MCL 205.731 and broad powers identified in MCL 205.732. The Defendant's reliance on *Direct Workers Comp Agency v Macdonald's Indus Prods*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (March 27, 2014), is also misplaced. The court here declined to apply *Wagner* because the statute in question did not provide discretion to the circuit court, unlike the

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<sup>52</sup> *Mikelonis*, Defendant's Appendix at 53a.

<sup>53</sup> 224 Mich App 400; 568 NW2d 693 (1997).

<sup>54</sup> *Wagner* at 401.

discretion allowed to the probate court by the statute in *Wagner*.<sup>55</sup> In the case at bar, the Tribunal (not a circuit court) does have broad jurisdiction and powers under the tax tribunal act, to determine questions of property tax law.<sup>56</sup>

Interestingly, Defendant has failed to cite a single appellate decision that indicates waiving interest and penalties is beyond the purview of the Michigan Tax Tribunal. Moreover, unless an assessment is under the aegis of the Board of Review, or the Michigan Tax Tribunal, there is no authority to reduce the amount of property taxes assessed to be found in the General Property Tax Act<sup>57</sup>, for Respondent, or Appellee. Yet, it is indisputable that property tax assessments may be reduced when appealed to the Michigan Tax Tribunal, even though the GPTA fails to mention this possibility. The Tribunal's authority does not come from the GPTA. Rather, it comes from the Tax Tribunal Act.<sup>58</sup> As the Tribunal clearly has the power to modify assessments and order refunds under the Tax Tribunal Act, it is totally illogical to hold that the Tribunal has no power to modify or eliminate interest and penalties ancillary to the original assessment.

**B. The Michigan Tax Tribunal, not the County Treasurer nor Circuit Court, is the final arbiter of property tax disputes.**

Giving the County Treasurer or a circuit court veto power over an MTT decision, as urged by Defendant, conflicts with the Tribunal's exclusive and

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<sup>55</sup> *Direct Workers Comp Agency*, slip at 28.

<sup>56</sup> Const 1963 art 9 section 28

<sup>57</sup> MCL 211.1 et seq.

<sup>58</sup> MCL 205.701 et seq.

original jurisdiction under MCL 205.731 over proceedings relating to an assessment, refund or redetermination of a tax levied under the property tax laws of this state. Such an interpretation also conflicts with the Court's holding in *Wikman v. Novi*,<sup>59</sup> relied upon recently in *Michigan Properties*, and *Hillsdale County Senior Services v. Hillsdale County*<sup>60</sup>. Such a holding would also conflict with MCL 205.752, (MTT decision final and conclusive as to all parties unless reversed, remanded or modified on appeal), MCL 205.753, (MTT final agency regarding taxes), and MCL 205.745, (Consent Orders not appealable and has like effect as an order or decision in a contested hearing). Appeals from a Tribunal decision go directly to the Michigan Court of Appeals, (MCL 205.753); not to the County Treasurer, nor a Circuit Court.

**C. Tribunal decisions may not be collaterally attacked in another venue.**

Even assuming *arguendo* that the Tribunal's judgment in fact is somehow in conflict with the GPTA or otherwise erroneous, MTT judgments are not subject to collateral attack in an enforcement proceeding. In *Ashland Twp. v. BAM Excavation*,<sup>61</sup> the Michigan Court of Appeals held that the claim that a tax levied beyond the power of the municipality to assess was not grounds to oppose the tax in a collection action to enforce the tax. In this decision, the court relied upon and summarized several published decisions. In one of the

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<sup>59</sup> 413 Mich 617; 322 NW2d 103 (1982).

<sup>60</sup> 494 Mich 46; \_\_ NW2d \_\_ (2013).

<sup>61</sup> COA # 289723, unpublished per curiam opinion, Appellee's Appendix at 16b

decisions, *State Treasurer v. Eaton*,<sup>62</sup> the court overturned the circuit court's finding that taxes were overvalued and over assessed because the enactment of the Tax Tribunal Act made such a determination beyond its jurisdiction. Of relevance in that decision is the language in MCL 205.731 and MCL 205.741.

In *Prayer Temple of Love v. Wayne County Treasurer, (re Petition of the Wayne Co Treasurer)*,<sup>63</sup> also relied on in *Ashland*, the court of appeals reversed the Wayne County Circuit Court's order setting aside the forfeiture on the grounds that the Michigan Tax Tribunal improperly determined that certain real property owned by a church was not exempt. In so holding, the court again noted that the Tribunal had exclusive jurisdiction over this issue, and its decision could not be collaterally attacked during the enforcement action. Finally, the court in *Ashland* rejected the taxpayer's argument that under *Continental Motors v. Muskegon Twp.*,<sup>64</sup> an illegal tax is void *ab initio* and therefore unenforceable. The Court held that since the Tax Tribunal Act was enacted eight years after *Continental*, its holding no longer applied.

As further noted in *Ashland*, the Tribunal's decisions may only be reviewed by the Michigan Court of Appeals, (and ultimately, the Supreme Court), rather than a circuit court under MCL 205.753. That review is extremely limited under the state's constitution, Const 1963 art 6 section 28. Accordingly, even if the Tribunal "got it wrong" when it incorporated the

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<sup>62</sup> 92 Mich App 327; 284 NW2d 801 (1979).

<sup>63</sup> 286 Mich App 108; 777 NW2d 507 (2009).

<sup>64</sup> 375 Mich 13, 16; 133 NW2d 163 (1965).

parties' stipulation into its judgment, the judgment may not be collaterally attacked during an enforcement action. Further, as the underlying judgment in this matter is a consent judgment, it may not be appealed, and has "...like effect as an order or decision in a contested hearing." Accordingly, under current law, the Defendant is bound by the MTT judgment.

**II. THE COURT OF APPEALS CORRECTLY HELD THAT JURISDICTION TO ENFORCE A TRIBUNAL DECISION MUST GO BEFORE A CIRCUIT COURT, AS THE TRIBUNAL HAS NO ENFORCEMENT POWER.**

Standard of Review

Whether a court has subject-matter jurisdiction is a question of law reviewed de novo. *Elba Twp v Gratiot Co Drain Comm'r*.<sup>65</sup> This Court reviews de novo issues of statutory interpretation. *International Business Machines Corp v Department of Treasury*.<sup>66</sup> When interpreting statutes, this Court must "ascertain and give effect to the intent of the Legislature." *People v Koonce*.<sup>67</sup> In interpreting a statute, this Court avoids a construction that would render any part of the statute surplusage or nugatory. *People v McGraw*;<sup>68</sup> *Baker v Gen Motors Corp*.<sup>69</sup> When considering the correct interpretation, the statute must be read as a whole. *Sun Valley Foods Co v Ward*.<sup>70</sup> Individual words and phrases,

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<sup>65</sup> 493 Mich 265, \_\_\_; \_\_\_ NW2d \_\_\_ (2013).

<sup>66</sup> \_\_\_ Mich \_\_\_; \_\_\_ NW2d \_\_\_ (July 14, 2014).

<sup>67</sup> 466 Mich 515, 518; 648 NW2d 153 (2002).

<sup>68</sup> 484 Mich 20, 126; 771 NW2d 655 (2009).

<sup>69</sup> 409 Mich 639, 665; 297 NW2d 387 (1980).

<sup>70</sup> 460 Mich 230, 237; 596 NW2d 119 (1999).

while important, should be read in the context of the entire legislative scheme.

*Herman v Berrien Co.*<sup>71</sup>

### Argument

After arguing that the Michigan Tax Tribunal has no authority to enter an order waiving interest, the Defendant then argues that the Macomb County Circuit Court has no jurisdiction to hear a mandamus action brought to enforce a Tribunal judgment. In support of this proposition, Defendant cites the recent decision of *Hillsdale County Senior Services v. County of Hillsdale*.<sup>72</sup> It is important to note that *Hillsdale* was not decided when the present action was filed in the circuit court. Defendant contends that under *Hillsdale*, a circuit court cannot grant a writ of mandamus in an action properly before the Michigan Tax Tribunal. While that was indeed the holding of the Court, it is an open question whether that holding is applicable to the case at bar. A major distinction from *Hillsdale*, in the present case a mandamus action was brought in the circuit court *after the Tribunal made its ruling*. In contrast, the matter in *Hillsdale* was *never brought before the Tribunal*, even though the subject matter, millage rates, was held to be within the exclusive jurisdiction of the Michigan Tax Tribunal. In contrast to the case at bar, *Hillsdale* was not a case where the Tribunal had made its decision and mandamus was then sought to force the county into compliance.

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<sup>71</sup> 481 Mich 352, 366; 750 NW2d 570 (2008).

<sup>72</sup> 494 Mich 46; \_\_ NW2d \_\_ (2013).



Defendant's invocation of *Hillsdale* for the proposition that the Plaintiff went to the wrong court is without support, as *Hillsdale* did not go that far. Indeed, the Court in *Hillsdale*, cited the court of appeals below, agreeing that:

[P]laintiff's sought an order of mandamus to compel the county to levy the full amount of the millage approved by voters. However, the gist of plaintiff's action concerns whether the county has authority to levy less than the millage limitation approved by voters. A jurisdictional claim "should be determined not by how the plaintiff phrases its complaint, but by the relief sought and the underlying basis of the action." As in Jackson[], the question presented by plaintiffs' action relates to direct review of a determination of rates under the property tax laws. Accordingly, the Tax Tribunal has subject-matter jurisdiction and the circuit court lacked jurisdiction to enter a judgment of mandamus. (internal citations omitted).<sup>73</sup>

Unlike the plaintiff in *Hillsdale*, Plaintiff Sal-Mar is not seeking a review of a determination of the taxes, interest or rates, it was seeking to enforce the judgment already entered by the Tribunal. Petitioner already availed itself of the subject-matter jurisdiction of the Tribunal, and the Tribunal already exercised its subject-matter jurisdiction over the case by entering the consent judgment. As the Court of Appeals noted below,

The county treasurer's decision in this case was in direct violation of the consent judgment issued by the tribunal. Plaintiff was not seeking to appeal or obtain review of the county treasurer's decision to ignore the consent judgment and was not seeking a redetermination of the taxes owed. Rather, plaintiff was seeking enforcement of the consent judgment. If plaintiff had proceeded in the tribunal, rather than the circuit court, it presumably would have obtained another judgment which would have had equal force and effect as the consent judgment. The decision in *Hillsdale Co Senior Servs* notes that "although the tribunal cannot itself issue injunctions, it can issue orders that may be enforced in circuit court." *Hillsdale Co Senior Servs, Inc*, 494 Mich at 59. Similarly,

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<sup>73</sup> *Hillsdale* at 62-63.

while the tribunal cannot entertain a mandamus action and issue a writ of mandamus, it can issue orders that may be enforced in the circuit court. It issued such an order when it issued the consent judgment. Thus, the subsequent mandamus action for enforcement was not an appeal subject to the exclusive jurisdiction of the tribunal.<sup>74</sup>

Should the Court go further in the present case, and now hold that the Michigan Tax Tribunal can issue a writ of mandamus, that rule should only be applied prospectively, or alternatively, the action should be remanded to the Michigan Tax Tribunal, with special instructions making it clear that it now has this power, and its jurisdiction has been preserved, per *Wikman*, as the law regarding where an action for enforcement being brought is clarified.

Ever since *Wikman v. Novi*<sup>75</sup> was decided, it has been presumed that the Michigan Tax Tribunal, as an agency rather than a court under our constitution, lacks equitable powers, including the power of contempt, and cannot by itself, enforce its ruling. The Court stated:

[The] Tax Tribunal lacks the power to issue an injunction. The issuance of an injunction is an exercise of judicial power. The constitution limits the Legislature's power to transfer judicial power to administrative agencies, see Const 1963, art 3, § 2, *Johnson v Kramer Bros Freight Lines, Inc*, 357 Mich 254, 258; 98 NW2d 586 (1959). . . . MCL 205.732 . . . does not expressly grant the tribunal the power to issue injunctions, and such power will not be extended by implication.<sup>76</sup>

This language is approvingly cited in *Hillsdale*.<sup>77</sup> Hence, prior to *Hillsdale*, and arguably after *Hillsdale*, a taxpayer's only remedy is to bring a writ of

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<sup>74</sup> *Sal-Mar*, 304 Mich App at 413.

<sup>75</sup> 413 Mich 617; 322 NW2d 103 (1982).

<sup>76</sup> *Wikman* at 647-648.

<sup>77</sup> *Hillsdale*, *supra*. p, 56.

mandamus where an entity fails to obey a Tribunal order.<sup>78</sup> This lack of enforcement power is also evidenced by the MTT rule requiring an action in the Ingham County Circuit Court to enforce a subpoena.<sup>79</sup> If the Michigan Tax Tribunal cannot enforce a subpoena compelling a witness to appear, it cannot compel an elected county official to follow any of its orders.

Accordingly, the only tool at an aggrieved taxpayer's disposal for enforcement of an MTT order is the hammer of Mandamus. Because of *Wikman*, it has been assumed that only the circuit court can wield that hammer. Despite the presence of the word "writ" in section 32 of the TTA, the Court reiterated in *Hillsdale* that the enforcement of Tribunal orders lies in the circuit court, stating:

To the extent that those opinions address the tribunal's jurisdictional generally, *Wikman* indicates that although the tribunal cannot itself issue injunctions, it can issue orders that may be enforced in circuit court.<sup>80</sup>

Indeed, the tribunal currently denies and dismisses actions seeking enforcement of a previous judgment on the basis of jurisdiction. Recently, the Tribunal determined in *Alexandrea LLC v Brownstown Township*, MTT No. 448982,<sup>81</sup> that it did not have jurisdiction to enforce the Consent Judgment

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<sup>78</sup> While it would certainly be easier for a taxpayer to be able to have "one stop shopping" at the MTT, our state's jurisprudence does not so provide.

<sup>79</sup> See R 205.1208(4), in effect from Oct. 20, 2009 through March 20, 2013, superseded by R 792.10253(4). Both the former and current rules state in relevant part, "[p]roceedings to enforce a subpoena may be commenced in the circuit court ... in which the hearing is held."

<sup>80</sup> *Hillsdale* at 59.

<sup>81</sup> Appellee's Appendix at 16b

issued in a Tribunal matter against the same party.<sup>82</sup> In *Alexandrea*, a consent judgment was previously issued in MTT Docket No. 364772 reducing the assessed, taxable and true cash values for the 2009, 2010 and 2011 tax years.<sup>83</sup> In November 2011, the Petitioner sold the subject property at issue to another party. The purchaser subsequently failed to pay its taxes, creating a delinquency. Partial refunds for the tax years within the consent judgment were processed and issued to Petitioner, however, the County offset part of the refund against the delinquent taxes owed by the subsequent purchaser. Petitioner Alexandria filed a Petition with the Tribunal seeking to enforce the judgment and issue a writ directing Respondents to pay the proper party. The case was ultimately dismissed indicating that enforcement of the Tribunal's Order was only attainable by application to the Circuit Court.<sup>84</sup>

Not only does the Tribunal routinely deny jurisdiction for such actions of enforcement as the case currently at bar, but the position of the Defendant ignores the fact that in the case at bar, Sal-Mar sought to enforce a Tribunal Judgment, and it was within the course of seeking this enforcement that the Defendant challenged the Tribunal's authority to waive interest. As noted by the Court of Appeals, "[i]f the circuit court had jurisdiction over the mandamus

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<sup>82</sup> Appellee's Appendix at 16b

<sup>83</sup> Appellee's Appendix at 16b – 17b.

<sup>84</sup> Appellee's Appendix at 16b – 17b.

action, defendant could not defeat that jurisdiction by raising a defense that invoked a review function.”<sup>85</sup>

Defendant tries to do just this by re-categorizing Plaintiff’s request from an action for enforcement of the Michigan Tax Tribunal Judgment to a complaint directed solely at the revised tax bill.<sup>86</sup> In doing so, Defendant relies upon a Michigan Tax Tribunal Case *Detroit Edison Company v City of Detroit*,<sup>87</sup> to assert that the Tribunal has subject matter jurisdiction over tax bill challenges. In *Detroit Edison*, the Petitioner filed an appeal to contest a tax bill under MCL 205.735a(6) in the Tribunal. However, the ultimate issue in *Detroit Edison* was about the bill itself, not an enforcement of a previous Tribunal determination. Defendant’s position ignores the fact that the tax bill issued in the current case at bar was a result of the Tribunal’s decision in the previously adjudicated case.<sup>88</sup> Sal-Mar was not seeking to review the bill issued, it was seeking to enforce the judgment already entered by the Tribunal. Petitioner already availed itself of the subject-matter jurisdiction of the Tribunal, and the Tribunal already exercised its subject-matter jurisdiction over the case by entering the consent judgment.

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<sup>85</sup> *Sal-Mar*, 304 Mich App at 413.

<sup>86</sup> Defendant cites Plaintiff’s complaint paragraph 10 for the proposition that Plaintiff is protesting the tax bill. Such a statement completely ignores the entire balance of the complaint, which was a complaint for mandamus to enforce the judgment of the Tribunal.

<sup>87</sup> MTT Docket Nos. 319840, 319841, 319842, 319844, 319845, 319847, 319869, and 319911 (April 5, 2011). Appellant’s Appendix on Appeal 134a.

<sup>88</sup> Per MCL 205.755 the officers charged with keeping the roll were required to correct the tax roll and collect or refund taxes as required by the order.

Essentially, the Defendant argues that rather than bringing a mandamus action, a successful taxpayer must go back to the Michigan Tax Tribunal to re-determine what the Tribunal determined. What Defendant proposes is to place taxpayers on an endless merry-go-round of litigation: a Tribunal judgment is entered for specific tax years; a taxing authority issues a bill or accounting as a result; such bill or accounting is incorrect, and Petitioner seeks to enforce the judgment in the circuit court; the circuit court cannot enforce it because it is beyond the circuit court's jurisdiction and expertise and a question of the validity of the judgment is raised; the taxpayer must then go back to the Tribunal to figure out what is that was decided; another judgment is obtained; the taxpayer again seeks enforcement in the circuit court for its new MTT judgment, etc., etc..<sup>89</sup> Clearly such a result would unnecessarily complicate an already complicated system and add another layer of frustration for a taxpayer to wade through before receiving relief.

**III. WHERE A COUNTY WORKS HAND IN HAND WITH A TOWNSHIP IN ASSESSING AND COLLECTING PROPERTY TAXES, AND WHERE THE COUNTY IS SERVED WITH A COPY OF THE TRIBUNAL PETITION AND CHOOSES NOT TO APPEAR, THE COURT OF APPEALS CORRECTLY HELD THAT THE COUNTY IS IN PRIVITY WITH THE TOWNSHIP AND THEREFORE BOUND BY A CONSENT JUDGMENT ENTERED BY THE TRIBUNAL.**

Standard of Review

This case is an appeal of the Court of Appeal's decision reversing the Circuit Court and granting Summary Disposition to the Plaintiff. The court

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<sup>89</sup> This example further ignores the intermediate visits to the court of appeals, and applications to this court.

reviews *de novo* a trial court's grant or denial of summary disposition.<sup>90</sup> Tax laws are to be construed liberally in favor of the taxpayer."<sup>91</sup> Any ambiguous or doubtful language must be strictly construed against the taxing authority. "There is no doubt that this Court has followed the general rule of construction that revenue laws containing doubtful language are to be strictly construed against the taxing authority."<sup>92</sup> This Court reviews *de novo* issues of statutory interpretation. *International Business Machines Corp v Department of Treasury*.<sup>93</sup> When interpreting statutes, this Court must "ascertain and give effect to the intent of the Legislature." *People v Koonce*.<sup>94</sup> In interpreting a statute, this Court avoids a construction that would render any part of the statute surplusage or nugatory. *People v McGraw*;<sup>95</sup> *Baker v Gen Motors Corp*.<sup>96</sup> When considering the correct interpretation, the statute must be read as a

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<sup>90</sup> *Beaudrie v. Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001); *Bennett v. Detroit Police*, 274 Mich App 307, 310-311; 732 NW2d 164 (2006).

<sup>91</sup> *Ready Power Co v Dearborn*, 336 Mich 519, 525; 58 NW2d 904 (1953); citing *Sibley Lumber Co v Department of Revenue*, 311 Mich 654, 660 (1945); *City of Detroit v Phillip*, 313 Mich 211, 216; 20 NW2d 868 (1945); and *Consumers Power Co v Corporation & Securities Commission*, 326 Mich 643, 648; 40 NW2d 756 (1950). See also *Ford Motor Co v State Tax Commission*, 400 Mich 499; 255 NW2d 608 (1977); *Bechtel v Dep't of Treasury*, 128 Mich App 324; 340 NW2d 297 (1983).

<sup>92</sup> *Borden, Inc v Dept of Treasury*, 391 Mich 495, 514; 218 NW2d 667 (1974), citing *Hart v Dept. of Revenue*, 333 Mich 248, 252; 52 NW2d 685 (1952); *Ecorse Screw Machine Products Co v Corporation & Securities Commission*, 378 Mich 415, 418; 145 NW2d 46 (1966).

<sup>93</sup> \_\_\_ Mich \_\_\_; \_\_\_ NW2d \_\_\_ (July 14, 2014).

<sup>94</sup> 466 Mich 515, 518; 648 NW2d 153 (2002).

<sup>95</sup> 484 Mich 20, 126; 771 NW2d 655 (2009).

<sup>96</sup> 409 Mich 639, 665; 297 NW2d 387 (1980).

whole. *Sun Valley Foods Co v Ward*.<sup>97</sup> Individual words and phrases, while important, should be read in the context of the entire legislative scheme. *Herman v Berrien Co*.<sup>98</sup>

### Argument

The Defendant argues that it is not in privity with Macomb Township, and therefore cannot be bound by the consent judgment between Petitioner and the Township. Based upon this Court's decisions in *Baraga County v. State Tax Commission*,<sup>99</sup> and *Adair v. State*,<sup>100</sup> Macomb County and Macomb Township were in privity for the purpose of waiving interest and fees. Furthermore, Defendant's argument that because Macomb County did not appear or intervene<sup>101</sup> in the underlying Tribunal appeal, even though it was served with the Michigan Tax Tribunal petition, pursuant to MCL 205.735a(6), and even though it had actual notice that the Petitioner had not paid its property taxes,<sup>102</sup> it is somehow not bound by the Tribunal's decision is completely without merit. This position, if adopted would significantly complicate every single appeal to the Michigan Tax Tribunal.

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<sup>97</sup> 460 Mich230, 237; 596 NW2d 119 (1999).

<sup>98</sup> 481 Mich 352, 366; 750 NW2d 570 (2008).

<sup>99</sup> 466 Mich 264; 645 NW2d 13 (2002).

<sup>100</sup> 470 Mich 105; 680 NW2d 386 (2004).

<sup>101</sup> Respondent could have intervened under former Tribunal rule R.205.1220(4), which read: "(4) Parties may be added or dropped by order of the tribunal on its own initiative or on motion of any interested person at any stage of the proceedings and according to terms that are just." A similar rule continues in its place, (R.792.10223(7), allowing another unit of government "... to appear as an amicus curiae or in another capacity as the tribunal considers appropriate."



In its decision below, the court of appeals discusses the Court's precedents regarding privity. It rightfully distinguishes the Court's holding in *Baraga*,<sup>103</sup> which held that the State Tax Commission was not bound by a Tribunal decision involving Baraga County. In reading *Baraga* in conjunction with the Court's decision in *Adair*,<sup>104</sup> the court held while the definition of privity may not be routinely applied to governmental agencies, it is not improper to apply the definition in some cases involving governmental entities.<sup>105</sup> The Court in *Baraga* noted that the local assessor is supervised by the State Tax Commission,<sup>106</sup> which is not the case between the Township assessor and the County Treasurer. In distinguishing *Baraga*, The court below stated:

Although the definition of privity used by our Supreme Court in *Baraga County* applied to a situation involving the state and a local government, the general principle can be applied to this case. As provided above, this principle states that the state would not be bound by a judgment to which a subordinate political subdivision was a party unless that subdivision had an interest in the litigation as a trustee for the state. Thus, it would follow that the consent judgment between plaintiff and the township would not bind the county unless the township, as the subordinate political subdivision, had an interest in the litigation as a trustee for the county. Here, the township had authority to represent the county's interest in collecting taxes. Cf *ANR Pipeline Co*, 266 Mich App at 213-214 (indicating that privity did not exist where petitioner did not show that the party had the authority to represent the state's interest in collecting state taxes). If there are delinquent taxes, they are turned over to the county treasurer, who pays the township the

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<sup>102</sup> *Sal-Mar*, 301 Mich App at 242.

<sup>103</sup> 466 Mich 264; 645 NW2d 13 (2002).

<sup>104</sup> 470 Mich 105; 680 NW2d 386 (2004).

<sup>105</sup> *Sal-Mar*, 301 Mich App at 240.

<sup>106</sup> *Baraga*, p. 272.

delinquent taxes with funds from the county's fully funded revolving tax fund. Then, the county collects the delinquent taxes with interest and fees from the property owner. This is unlike the situation in *Baraga County* where the township carried out the property tax laws and the state would step in only if the township failed to carry out its duties. *Baraga County*, 466 Mich at 271-272. Rather, here, the township receives the tax rolls from the county and then sends bills to the taxpayers. The county will automatically pay any taxes that the township is unable to collect. Accordingly, the county and the township work hand in hand in collecting taxes. Thus, the township and the county shared the same interest in the MTT litigation, which was to receive a fair assessment of the value of the property in order to jointly collect the proper amount of taxes on the property.

Additionally, under the private-party definition of privity, the township and the county share a "substantial identity of interests" and a "working functional relationship." As noted, the township and the county work together to collect the property taxes owed. If the taxpayers become delinquent on their taxes, the county will pay the township from a revolving fund and then seek reimbursement from the taxpayer. It is clear the two entities are in a working functional relationship with one another to assess property and collect the property taxes.<sup>107</sup>

**A. The township and county work hand in hand when collecting taxes, under the standard set forth by this Court in *Baraga*, the County Treasurer and Macomb Township were clearly in privity.**

Under the standard set forth by the Court in *Baraga*, and adopted by the Court of Appeals below, the County Treasurer is clearly bound. The Court stated:

There is law directly describing how privity applies among governmental units. Both *Corpus Juris Secundum* and *American Jurisprudence Second* indicate that there is no privity in this situation. 50 CJS, § 869, Judgments, p 443, states:

A state may be bound by a judgment for or against a public officer, or agency, but only with respect to a matter concerning which he or the agency is authorized to represent

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<sup>107</sup> *Sal-Mar*, 301 Mich App at 240-241.

it, and it is not bound by a judgment to which a subordinate political subdivision was a party in the absence of a showing that such political body had an interest in the litigation as a trustee for the state.

Defendant in its application of *Baraga*, asserts that, “[t]his Court held that the state was not bound by the consent judgment citing several reasons, including that there was no privity between the state and the local units that were parties to the appeal due to their differing roll.”<sup>108</sup> However, *Baraga* found that there was no privity between the State Tax Commission and the local units, not between the local units themselves.<sup>109</sup> Thus, while the State Tax Commission is not bound by a consent judgment entered into by a Township, Macomb County is clearly bound by the judgment entered into by Macomb Township. First of all, in Tribunal proceedings, Townships in most cases represent counties, school districts, library boards, jails, and other entities that receive property taxes based upon a millage levied on real property. Unlike the STC, the County is served with the Petition, and is allowed to intervene under the Tribunal rules, should it decide to do so.<sup>110</sup> Moreover, the statutory scheme,

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<sup>108</sup> Defendant’s Brief at 31.

<sup>109</sup> *Baraga* at 271-272. The appeal in *Baraga* resulted from the Plaintiffs (Baraga County and local townships Baraga and L’anse) action for Mandamus against Defendant, the State Tax Commission, seeking to enforce a consent judgment entered by the Tribunal that was between the Plaintiffs. This Court Determined that the consent judgment between the Plaintiffs was not enforceable against the state tax commission, which was not a party to the Tribunal proceedings. *Baraga* at 276.

<sup>110</sup> While not stated by the court of appeals below, there are other relevant distinctions in the present case to the facts in *Baraga*. Unlike Macomb County, there was no requirement at the time that the Tribunal appeal was filed in *Baraga* for the State Tax Commission to be served with a copy of the Petition. Another important distinction is that unlike Macomb County, the

contrary to Defendant's assertions, contemplates a coordinated effort to collect taxes.

The General Property Tax Act, provides a comprehensive system for the assessment of property for ad valorem tax purposes, and for collection of those taxes.<sup>111</sup> Under this act Townships serve themselves and other governmental units by providing tax collection services. Michigan Townships, generally through an assessor, provide for uniform assessments of property values.<sup>112</sup> This assessment is then subject to a process of equalization by the county.<sup>113</sup> Townships are charged with collecting property taxes on behalf of other units of government, such as schools and the county, rather than impose a burden on citizens to pay separate taxes to each unit.<sup>114</sup> The Township's collecting officer

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STC does not have specific tax revenues at stake in any given property tax appeal.

<sup>111</sup> See *Michigan Properties*, at 530.

<sup>112</sup> See Art. 9 Section 3 of Michigan Constitution, and MCL 211.27a

<sup>113</sup> MCL 211.34

<sup>114</sup> MCL 211.42 of GPTA directs a township supervisor to prepare the tax roll and annex to the roll a warrant to command the township treasurer to collect sums set forth in the roll, amounts collected for county and state purposes are paid over to the county treasurer, amounts collected for school district are paid over to the district treasurer, and the remaining amounts are paid over for purposes specified on the roll. MCL 211.43(2) of GPTA governs the bonding of the township treasurer in favor of the county in the actual amount of county and school taxes for (1) paying over to the county treasurer all county taxes, (2) paying to the respective school treasurers all school taxes, and (3) duly and faithfully performing all the other duties of the office of treasurer. MCL 211.43(3)-(4) sets forth schedule of delivery of tax collections made by township treasurer to county and school district treasurers. This provision also places limitations on the maximum amount of taxes to be held by Township before delivery to the County Treasurer. MCL 211.43(5) Township supervisor delivers the tax roll to the township treasurer. MCL 211.43(2). Under MCP 211.44, the township treasurer then collects the tax.

must collect the taxes before March 1, and any uncollected taxes are placed on a delinquent tax roll.<sup>115</sup> This is in turn filed with the county treasure and copies are sent to the school districts. The county treasurer must provide a receipt.<sup>116</sup> The county then in turn enters a delinquent property statement in its records, which constitutes a return if delinquent taxes to the Michigan Department of Treasury.<sup>117</sup> The county treasurer's preparation of such statement falls under the rules and regulations established by the state treasurer.<sup>118</sup> Property is then returned as delinquent to the county treasurer and is subject to foreclosure procedures pursuant to MCL 211.78a.

Neither the county nor a township or city alone has the power to assess property, nor to collect the taxes, under the GPTA, rather this governmental function is shared between the county and township in a coordinated manner. The collection of delinquent taxes and the interest imposed under 78a(3), results from the interplay between the county and township. The Court of Appeals correctly held that "the township and the county work hand in hand when collecting taxes."<sup>119</sup> The county's argument that the Township's and County's rolls are separate and distinct, is purely conjecture and ignores the statutory scheme of the General Property Tax Act. Macomb Township not only represented the other governmental units in the Tribunal proceeding, the

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<sup>115</sup> MCL 211.45 and MCL 211.55

<sup>116</sup> MCL 211.55

<sup>117</sup> MCL 211.57

<sup>118</sup> MCL 211.57

<sup>119</sup> *Sal-Mar*, 301 Mich App 234, 241.

Tribunal's determination of state equalized value and taxable value directly affects the revenue of the county. Clearly, the township and county shared the same interest in the Tribunal litigation, which as pointed out by the court of appeals was "to receive a fair assessment of the value of property in order to jointly collect the proper amount of taxes on the property."<sup>120</sup>

**B. The township and county shared the same interest in the MTT litigation to receive a fair assessment to jointly collect property tax, the fact that the County has a delinquent tax revolving fund, does not defeat privity.**

The Defendant-Appellee argues further argues that it was not in privity with the Township, and should not be bound by a Tribunal judgment in part because Macomb County has a delinquent tax revolving fund, and therefore the Township and County do not have a substantial identity of interests. This is an irrelevant distinction. Each entity that is defended by a respondent township in a property tax dispute has a different stake in any proceeding since each have a different millage rate. It is totally irrelevant as to how they finance delinquencies. Some entities have the power to borrow funds, while others do not. In the event that a reasonable settlement on delinquent taxes could not be reached, Macomb County has the advantage over the other entities, in that it has the power of forfeiture, and for resale of the property. Such distinctions do not negate an identity of interests. Furthermore, under MCL 211.87b, any delinquent taxes that are not ultimately received by the county can be charged back to the township; the county has a full right of recourse against the

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<sup>120</sup> *Sal-Mar*, 301 Mich App at 234, 241.

township for these non-collected taxes. Every entity stands to gain together, or lose together in property tax litigation. The only real difference between them is how great a stake. The law does not hold that because Macomb Township stands only to lose a nickel to every dime Macomb County stands to lose, they are not in privity. The interests need not be identical. Rather, as our Supreme Court stated,

To be in privity is to be so identified in interest with another party that the first litigant represents the same legal right that the later litigant is trying to assert. *Baraga Co v State Tax Comm*, 466 Mich 264, 269-270; 645 NW2d 13 (2002). The outer limit of the doctrine traditionally requires both a “substantial identity of interests” and a “working functional relationship” in which the interests of the nonparty are presented and protected by the party in the litigation.<sup>121</sup>

There is no “dollars and cents test” put forth by any court to determine if an interest is substantially identical. Revolving fund or not, the County Treasurer cannot convincingly argue that its interest is not substantially identical, and that it had no working functional relationship with Macomb Township.

Finally, it will cause great confusion to determine that determining privity between a county and a township is dependent specifically on that County’s collection regimen. A uniform policy of enforcement across the state would obviously make Michigan’s tax laws more competitive with other state’s tax laws.

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<sup>121</sup> *Adair v. State of Michigan* 470 Mich 105, 122; 680 NW2d 386 (2004).

**C. The township and the county shared the same interest to assess property and collect property taxes; Defendant had the choice to intervene if it feared the township would not adequately represent this interest.**

In any case, where the County is served with a property tax petition and fails to defend the action, it is in no position to complain about the result of that appeal. In fact, the county's remedy under the Tax Tribunal Act is to intervene or implead under MCL 205.744(2), if it truly believed its interests were not likely to be adequately represented.<sup>122</sup> Once the Tribunal appeal is over, the County Treasurer does not have the authority to undermine, ignore or veto a decision of the Michigan Tax Tribunal.

While it is the responsibility of the township or city assessor to set forth an assessment role,<sup>123</sup> townships and cities typically defend the assessment in the Michigan Tax Tribunal on behalf of all of several local entities. For instance, the 2011 tax bill for the subject property, which can be found on-line,<sup>124</sup> shows separate millages for the Chippewa School District; for the state education fund, for the Macomb Intermediate School District, for Macomb Community College, and for Macomb County. Each of those entities is affected by an adjudication in the Michigan Tax Tribunal, which ultimately determines the taxable value of the subject property. Taxable value is multiplied by each entity's millage rate to determine the property tax levied for that entity. Under

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<sup>122</sup> In fact this occurred in *Baraga*, the County intervened, and was a party to the consent judgment reached in that case.

<sup>123</sup> Said role is also certified by the County for equalization purposes under MCL 211.34.



the Defendant's theory, no entity other than the Township would be bound by the Tribunal's determination. Each of the separate entities could now claim a different taxable value because it was not a party to the Tribunal appeal, and therefore not bound. Under §35a of the Tax Tribunal Act,<sup>125</sup> these entities are given notice of the tax appeal, and are allowed to answer, or intervene if they choose to do so. Yet, Defendant argues in effect, that the County's failure to intervene or appear should shield it from having to obey a Tribunal decision. To point out the obvious, the Taxpayer does not get to choose who represents the various entities in the Michigan Tax Tribunal. Under the Defendant's reasoning, a taxpayer can never bind the county or a school district in a Tribunal proceeding if that entity chooses not to appear, and the county or other entity could simply frustrate the entire appeal process by failing to appear. Such a holding would make a mockery out of the property tax appeal system in our state.

**D. Because the township and county were in privity, the county is bound by the consent judgment, and plaintiff's request for a writ of mandamus was proper.**

For all of the above reasons, the court of appeals reached the correct result below in holding that the county is bound by a Tribunal decision in a property tax appeal. The court of appeals below determined that Plaintiff's may

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<sup>124</sup> BSAssoftware.com.

<sup>125</sup> MCL 205.735a

seek equitable relief through a writ of mandamus. Pursuant to *Tuggle v Mich Dep't of State Police*,<sup>126</sup> which Defendant cites,

The issuance of a writ of mandamus is proper where (1) the party seeking the writ has a clear legal right to performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial, and (4) no other remedy exists that might achieve the same result.

In the case at bar, the court of appeals determined:

[b]ecause the township and county were in privity with one another, the county would be bound by the consent judgment. Thus, it follows that plaintiff has a clear legal right to performance of the judgment and defendant has a clear legal duty to perform, which satisfies the first and second elements required to issue a writ of mandamus.

The third and fourth elements required for issuance of a writ of mandamus are also satisfied in that the act here is ministerial and plaintiff has no other adequate remedy, except to have the consent judgment enforced against defendant. Thus we hold that the trial court erred by granting defendant's motion for summary disposition, and denying plaintiff's motion for summary disposition. Accordingly, plaintiff's request for a writ of mandamus should have been granted.<sup>127</sup>

#### Conclusion and Request for Relief

This Court should affirm the decision of the Court of Appeals. The Tribunal was granted broad powers under the Tax Tribunal Act to resolve tax disputes under the property tax laws of this state, however under the current statutory scheme, even the Tribunal itself admits to not having the power to enforce its own judgments. Overturning the decision of the Court of Appeals would expand the Tribunal to a "One Stop Shop." While convenient, it is unclear what such enforcement procedures would be and what the

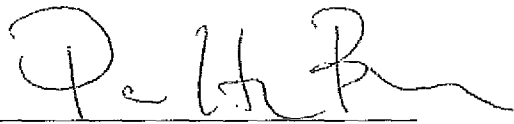
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<sup>126</sup> 269 Mich App 657 (2005).

consequences of such an action would entail. Overturning the decision of the Court of Appeals would tamper with the current statutory scheme and result in much more litigation and confusion, not only with regard to the enforcement powers of a quasi-judicial body, but also as to the validity of Tribunal judgments against all taxing authorities. For these reasons, the Plaintiff respectfully requests that the court of appeals decision be affirmed.

Respectfully submitted,

HOFFERT & ASSOCIATES, P.C.

By:   
Paige Harley Bachand (P71950)  
Attorney for Petitioner

Dated: 7/18/14

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<sup>127</sup> *Sal-Mar*, 301 Mich App 234 at 243.

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

Appeal from the Court of Appeals

Hon. Pat M. Donofio, P.J., Hon. Jane E. Markey, Hon. Donald S. Owens

**SAL-MAR ROYAL VILLAGE, L.L.C.**

Plaintiff / Appellee,

vs

SC #147384

Court of Appeals # 308659

Macomb Cir. Ct. 2011-004061 AW

**MACOMB COUNTY TREASURER,**

Defendant/Appellant

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**PROOF OF SERVICE**

PAIGE HARLEY BACHAND certifies on the 18<sup>th</sup> day of July 2014, she did serve the attached Appellee's Brief on Appeal along with its appendix by first class mail to the following interested parties:

Frank Krycia

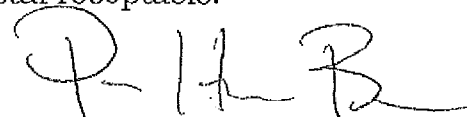
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and placed in an envelope with prepaid First Class postage duly applied and deposited in a United States postal receptacle.



Paige Harley Bachand (P71950)